

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

Michael J. Messier and  
Melissa A. Messier

v.

Civil No. 04-cv-28-JD

Dell Computer Corporation, et al.

O R D E R

The plaintiffs move for reconsideration of the orders granting summary judgment in favor of the defendants. The summary judgment orders were issued on August 3, 2004, and January 10 and October 31, 2005. Final judgment was entered on October 31, 2005. The plaintiffs' motion for reconsideration, invoking grounds covered by Federal Rule of Civil Procedure 60(b)(1), (2), & (3), was filed on March 30, 2007.

A motion pursuant to Rule 60(b)(1), (2), or (3), seeking relief from an order or judgment, must be brought within one year of the order or judgment. That time limit is absolute, and some courts have found it jurisdictional. See The Tool Box, Inc. v. Ogden City Corp., 419 F.3d 1084, 1088 (10th Cir. 2005) (absolute); Berwick Grain Co., Inc. v. Ill. Dep't of Agric., 189 F.3d 446, 559 (7th Cir. 1999) (jurisdictional); Nucor Corp. v. Neb. Pub. Power Dist., 999 F.2d 373, 376 (8th Cir. 1993) (jurisdictional). The time is not tolled during the pendency of

an appeal. The Tool Box, 419 F.3d at 1088; King v. First Am. Investigations, Inc., 287 F.3d 91, 94 (2d Cir. 2002); Nevitt v. United States, 886 F.2d 1187, 1188 (9th Cir. 1989).

Having invoked the grounds provided in subsections one, two, and three, the plaintiffs cannot also rely on Rule 60(b)(6), which is exempt from the one-year limitation period. See Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 393 (1993) (holding that provisions of Rule 60 are mutually exclusive). Because the plaintiffs did not file their motion for reconsideration within one year of the summary judgment orders or the final judgment entered in the case, the motion is time-barred, and the court lacks jurisdiction to consider it.

#### Conclusion

For the foregoing reasons, the plaintiffs' motion for reconsideration (document no. 95) is denied.

SO ORDERED.

  
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Joseph A. DiClerico, Jr.  
United States District Judge

May 3, 2007

cc: Andrew D. Dunn, Esquire  
Steven M. Gordon, Esquire  
Melissa A. Messier, pro se